

**COURT OF APPEALS
DECISION
DATED AND FILED**

May 21, 2013

Diane M. Fremgen
Clerk of Court of Appeals

NOTICE

This opinion is subject to further editing. If published, the official version will appear in the bound volume of the Official Reports.

A party may file with the Supreme Court a petition to review an adverse decision by the Court of Appeals. See WIS. STAT. § 808.10 and RULE 809.62.

Appeal No. 2012AP1733

Cir. Ct. No. 2011CV54

STATE OF WISCONSIN

**IN COURT OF APPEALS
DISTRICT III**

ERIC RINGSRED AND DEBORAH RINGSRED,

PETITIONERS-APPELLANTS,

V.

**CITY OF BAYFIELD, WISCONSIN, A MUNICIPAL CORPORATION,
LARRY McDONALD, MAYOR OF BAYFIELD, BILLIE HOOPMAN, CITY
CLERK OF BAYFIELD AND CITY OF BAYFIELD PLAN COMMISSION,**

RESPONDENTS,

CITY OF BAYFIELD BOARD OF ZONING APPEALS,

RESPONDENT-RESPONDENT.

APPEAL from a judgment of the circuit court for Bayfield County:
JOHN P. ANDERSON, Judge. *Affirmed.*

Before Hoover, P.J., Mangerson, J., and Thomas Cane, Reserve
Judge.

¶1 PER CURIAM. Eric Ringsred and Deborah Ringsred, pro se, appeal a decision upon certiorari review affirming the City of Bayfield Plan Commission's revocation of a conditional use permit concerning a bed and breakfast. We affirm.

¶2 In early 2006, the Ringsreds were granted a conditional use permit to operate a bed and breakfast located in an R-1 residential zoning district in Bayfield. The permit was subject to three qualifying conditions. The third condition required that a separate cottage remain vacant until the City was notified the cottage was to be used for habitation.

¶3 On September 8, 2006, the Ringsreds notified the City that they intended to use the cottage as an accessory dwelling. On September 19, 2006, the City's attorney informed them the cottage could not be used as an accessory dwelling for the bed and breakfast unless another conditional use permit was obtained, as required by the City's zoning ordinances. The Ringsreds did not apply for any further conditional use permits regarding the cottage.

¶4 On July 2, 2009, the City's zoning administrator notified the Ringsreds in writing that it had "come to the City's attention the cottage was occupied during a portion of this past year." The correspondence also stated, "We are respectfully requesting you to respond to this issue in writing prior to the Commission's next meeting on July 20, 2009." The Ringsreds submitted a response stating, "During the non-B&B period of the year, we let someone stay in our cottage as she needed a place to stay. This was not a rental situation"

¶5 During August and September 2009, the Commission convened a hearing concerning the alleged permit violations. The Ringsreds attended this hearing. The Commission issued a decision on September 15, 2009. On

September 18, 2009, the City notified the Ringsreds in writing of the results of the hearing. The Commission determined the Ringsreds had violated the conditional use permit by allowing the cottage to be used as a dwelling. The Commission upheld the requirement that the cottage remain vacant and warned of potential consequences of violating the permit in the future. The Commission also stated if the Ringsreds were interested in further use of the cottage, they would be required to complete an application for an accessory dwelling unit for the Commission's consideration. The Commission also required the Ringsreds to confirm in writing that the cottage would not be used as an occupied dwelling.

¶6 The Ringsreds responded on September 28, 2009:

The cottage has been occupied as a dwelling unit during the months of "non-B&B operation" during the winter months of 2006-07, 2007-08, and 2008-09 (and it was used in such a manner prior to our purchase of the property).

The cottage will no longer be occupied until notification to the Plan Commission as required by our B&B conditional use permit, nor until any required permits or approvals are obtained.

¶7 In September 2010, the City investigated another complaint that the cottage was being occupied as a residence. On November 9, 2010, a hearing was held. Evidence established the cottage had been occupied during the summer of 2010, contrary to the condition of the conditional use permit as modified on September 15, 2009, and the Ringsreds' written commitment that it would remain vacant. The Commission found there were no reasonable modifications of the conditional use permit that would assure ordinance compliance, given the history of this case. The Commission voted to revoke the Ringsreds' conditional use permit.

¶8 The Board of Appeals upheld the Commission’s decision after a hearing on February 15, 2011. At this hearing, Eric Ringsred admitted the cottage had been rented during the summer of 2010. The Ringsreds sought certiorari review in the circuit court. The court issued a written decision which affirmed the Board. This appeal follows.

¶9 Our scope of review by certiorari is strictly limited. We review the decision of the board of appeals, not the decision of the circuit court. *See Hillis v. Village of Fox Point Bd. of Appeals*, 2005 WI App 106, ¶6, 281 Wis. 2d 147, 699 N.W.2d 636. A court on certiorari review must accord a presumption of correctness and validity to a board of appeals’ decision. *See State ex rel. Ziervogel v. Washington Cnty. Bd. of Adjust.*, 2004 WI 23, ¶13, 269 Wis. 2d 549, 676 N.W.2d 401. Statutory certiorari review is limited to: (1) whether the board kept within its jurisdiction; (2) whether it acted according to law; (3) whether its action was arbitrary, oppressive or unreasonable and represented its will and not its judgment; and (4) whether the evidence was such that it might be reasonable to make the order or determination in question. *See id.*, ¶14.

¶10 On appeal, the Ringsreds claim they notified the City in 2006 of their intention to use the cottage as an accessory dwelling, which fulfilled the third condition of the conditional use permit. The Ringsreds thus reason the Commission had no authority to amend or modify the permit conditions at the September 15, 2009 hearing, as they did not violate their conditional use permit prior to September 2009. However, their argument is fatally flawed.

¶11 First, the Ringsreds failed to appeal the Commission’s September 15, 2009 modification of the conditional use permit conditions. The Ringsreds insist they are entitled to request “a fresh consideration of all relevant

facts and law, regardless of prior determinations” because “Wisconsin rejects the application of the doctrine of res judicata to the proceedings of an administrative agency.”¹ However, we conclude this argument is undeveloped and we shall not consider it further. *See M.C.I., Inc. v. Elbin*, 146 Wis. 2d 239, 244-45, 430 N.W.2d 366 (Ct. App. 1988).

¶12 In any event, the hearing before the Board of Appeals was de novo, and the Ringsreds were provided the opportunity to submit any testimony or documentation they saw fit. At the end of the day, the evidence was sufficient to justify the Board’s decision. The Board reasonably inferred the purpose of the original conditional use permit’s third condition was to ensure that occupancy of the cottage would be in compliance with the City’s zoning ordinances. Quite simply, ordinance compliance was an implicit part of the condition that the Ringsreds notify the City if the cottage was to be used for habitation.

¶13 Even if that were not the case, the Ringsreds were specifically informed of the requirement for a separate conditional use permit for the cottage by the city attorney’s September 19, 2006 correspondence advising the cottage could not be used as an accessory building unless a conditional use permit for that purpose was obtained. The Ringsreds made no legitimate effort to obtain a separate conditional use permit for the cottage.

¶14 Moreover, the Ringsreds not only raised no objection to the permit modifications, they also promptly complied with the requirement that they provide

¹ We no longer use the term “res judicata.” The term claim preclusion replaced res judicata; the term issue preclusion replaced the term collateral estoppel. *See Northern States Power Co. v. Bugher*, 189 Wis. 2d 541, 550, 525 N.W.2d 723 (1995).

the Commission with a written commitment that the cottage would not be occupied without first obtaining the required permit. The Ringsreds stated in writing on September 28, 2009: “The cottage will no longer be occupied until notification to the Plan Commission as required by our B&B conditional use permit, nor until any required permits or approvals are obtained.” Despite these assurances, the Ringsreds again allowed the cottage to be used as a dwelling. That violation resulted in the Commission’s decision to revoke their conditional use permit.

¶15 Under these circumstances, the Ringsreds will not now be heard to complain they “fulfilled their entire obligation pertaining to ‘Condition #3’ way back in 2006.” The Ringsreds’ numerous violations of the permit were adequate to sustain the Board’s finding that there were no reasonable modifications of the conditional use permit that would assure compliance with the ordinance, given the history of this matter. The Board’s decision to revoke the conditional use permit is supported by a reasonable view of the evidence.

¶16 The Ringsreds also argue the Commission lacked jurisdiction to enact the September 15, 2009 modifications because the hearing was not preceded by a written complaint, as required by the City’s zoning ordinances. However, “[p]leadings are to be treated as flexible and are to be liberally construed in administrative proceedings.” *Loomis v. Wisconsin Pers. Comm’n*, 179 Wis. 2d 25, 30, 505 N.W.2d 462 (Ct. App. 1993). Here, the zoning administrator’s July 2, 2009 correspondence can be reasonably construed as a written complaint for purposes of the ordinance. It notified the Ringsreds of the alleged violation, requested a written response, and also informed them the procedure was being conducted in accordance with the City’s zoning ordinance pertaining to complaints

regarding conditional uses. Accordingly, the Zoning Administrator's July 2, 2009 letter was sufficient to invoke the Commission's jurisdiction to act.²

By the Court.—Judgment affirmed.

This opinion will not be published. See WIS. STAT. RULE 809.23(1)(b)5 (2011-12).

² We do not consider it relevant that the Board of Appeals did not address every argument, or sub-argument, the Ringsreds raised. We conclude that a reasonable basis supported the Board of Appeals' decision, despite those arguments.

